

**Proposed Action on Arkansas' 2010, 2012, 2014, and 2016 § 303(d) Lists of Impaired Waters
Communications Plan**

Contacts

Program: Laura Hunt x9729 and Selena Medrano x2776
External Affairs: Joe Hubbard x8476

Action Summary (Internal Only)

EPA is proposing to partially approve Arkansas' submission for the 2010, 2012, 2014, and 2016 § 303(d) lists and deferring action on 45 waterbody pollutant combinations. The EPA is working closely with ADEQ to assemble available data for these water bodies to determine whether an assessment is possible or if we agree that there is insufficient data for an assessment.

The lists were submitted on April 1, 2010, March 30, 2012, April 1, 2014, and April 1, 2016 respectively. EPA reviewed the assessment methodology used by the state in developing the § 303(d) list and the State's description of the data and information considered. EPA's review of Arkansas' 2010, 2012, 2014 and 2016 § 303(d) lists is based on the EPA's analysis of whether the state reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

As it is the State's most recently compiled list of impaired waters in the state, the 2016 Arkansas §303(d) list incorporates and updates the 2010, 2012, and 2014 lists of impaired waters. Arkansas' draft 2016 §303(d) list is comprised of 148 assessment units (238 waterbody / pollutant combinations). The most recent EPA approved listings constitute the applicable list of impaired waters in the state of Arkansas.

Arkansas published their draft 2016 § 303(d) list for 60-day public comment period that ended on March 11, 2016. EPA did not receive notification of the public comment period from the state or a draft list for review prior to the public comment period. Due to concerns from environmental groups, the Beaver Water District, and National Park Service, ADEQ extended their public comment period to March 16, 2016 and also conducted an internal independent review of Arkansas' draft 2016 § 303(d) list.

Potential Controversy Related to Buffalo River Watershed

The Buffalo River is described by Arkansas's Reg. 2 water quality standards (WQS) as extraordinary resource waters (ERW) and is designated a national scenic river. EPA Region 6 has received phone calls and emails from members of Arkansas Public Policy Panel, the National Park Service Conservation Association, private citizens and the National Park Service regarding potential water quality impairments to three tributaries (Big Creek, Mill Creek, and Bear Creek) that feed into the Buffalo National River. Notably, Big Creek, Mill Creek, and Bear Creek are not explicitly identified as ERW waters in the water quality standards. Each have requested the ADEQ to add these three tributaries to Arkansas's draft 2016 § 303(d) list. Arkansas received more than 150 public comments opposing the state's decision to omit Big Creek, Mill Creek, and

Bear Creek from Arkansas's draft 2016 § 303(d) list for bacteria (Mill Creek and Big creek) and dissolved oxygen (Big Creek and Bear Creek).

On April 12, 2016, the Buffalo River Coalition submitted a letter to Gina McCarthy highlighting concerns about violation of antidegradation regulations and potential water quality impairment to the Buffalo River watershed. The Buffalo River Coalition requested EPA to add Big Creek and Mill Creek to Arkansas's draft 2016 list as impaired for bacteria and dissolved oxygen.

On September 30, Arkansas governor directed 5 agencies to form the Beautiful Buffalo River Action Committee. As stated by the Governor, priorities include developing an effective forum for stakeholder engagement, leading the development of the Buffalo River Watershed Management Plan, immediately implementing improvement projects within the watershed, and prioritizing immediate and future research needs.

Potential Controversy Related to Illinois River Watershed

One of the more controversial additions is EPA's action to add Spring Creek and Osage Creek because of elevated phosphorus levels and impacts to stream biology. These creeks are tributaries to the Illinois River in northwest Arkansas, which then flow into Oklahoma. Municipal dischargers into the Illinois River Watershed may oppose the inclusion of these waters. The Cities of Springdale and Rogers provided funding for a special study that led the State to conclude that these waters need not be listed. However, the State did not consider applicable water quality standards that protect healthy stream biology, and EPA believes the study itself provides information that supports inclusion of Spring and Osage Creeks on the impaired waters list with phosphorus identified as the pollutant causing impairment.

The Illinois River watershed runs from between the States of Arkansas and Oklahoma, and Illinois River watershed streams in both States remain impaired by phosphorous. Point source discharges and excessive nutrient runoff from fields where poultry waste has been used as fertilizer have contributed to growth of aquatic vegetation, much of it algae, which has become a water quality concern in Oklahoma's Lake Tenkiller.

In November 2009, EPA Region 6 launched the development of a comprehensive multi-jurisdictional watershed modeling project. The goals of this modeling project are to better understand the relationship between sources of phosphorus and water quality conditions in the watershed, and to assess potential phosphorus load reductions necessary to meet water quality goals in both States. Ultimately, EPA will work with Oklahoma and Arkansas, along with tribal agencies, to develop one or more watershed TMDL based on this modeling effort. The Arkansas and Oklahoma congressional delegations have been interested in the modeling project.

Several segments of the Illinois River (e.g., Illinois River, Barren Fork, Flint Creek and Lake Tenkiller) are currently on the State of Oklahoma's 303(d) list for total phosphorus (TP), while the mainstem Illinois River in Arkansas is not listed for TP. However, several tributaries to the Illinois River in Arkansas (e.g. Osage Creek, Muddy Fork, and Spring Creek) were determined to be Phosphorus-impaired and are proposed for inclusion on the State's Clean Water Act 303(d) list in this action.

In 1992 the U.S. Supreme Court ruled that Oklahoma could establish its own phosphorus standards for the Illinois River. In 2002 Oklahoma established a phosphorus water quality criterion of 0.037 mg/l for its portion of the Illinois River, one of the State's designated "scenic rivers." In 2003 Oklahoma and Arkansas signed an agreement that stipulates NPDES permit limits of 1.0 mg/l of phosphorus for specified major dischargers in the watershed. The agreement was an interim step to meet Oklahoma standards and is applicable through June 2012, at which time full implementation of the Oklahoma standard is required.

Desk Statement (External)

After careful review of Arkansas' draft § 303(d) list submittal packages, the EPA has determined that Arkansas' 2010, 2012, 2014 and 2016 § 303(d) lists meet the requirements of § 303(d) of the Clean Water Act (CWA) and the EPA's implementing regulations with the exception of the 45 waterbody pollutant combinations on which EPA is deferring at this time. As a result, the EPA partially approves Arkansas' 2010, 2012, 2014 and 2016 § 303(d) lists with further action pending. Today, the U.S. Environmental Protection Agency Region 6 sent a letter to Arkansas Department of Environmental Quality to partially approve the State's Clean Water Act § 303(d) lists for 2010, 2012, 2014 and 2016 and take deferred action on 45 waterbody pollutant combinations. EPA's approval will be published in the Federal Register. EPA has worked closely with the Arkansas Department of Environmental Quality to ensure its 2010, 2012, 2014 and 2016 lists include impaired water bodies based on available scientific data. The Clean Water Act requires EPA to review impaired water bodies in each state every two years. Those water bodies receive additional attention and resources to reduce pollution and improve water quality, resulting in better health and economic benefits to the State.

Topline Messages

The goal of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's water.

The Clean Water Act requires States to identify impaired water bodies and submit a list to EPA for approval every two years.

Improved water quality will have positive health and economic benefits throughout Arkansas and neighboring States, as well.

EPA recognizes the significant efforts made by stakeholders to improve and protect water quality in Arkansas, especially those related to phosphorus reductions and stormwater management. Cities in Northwest Arkansas have made a significant investment in improving water quality.

EPA believes states are best suited to operate CWA 303(d) water quality protection programs.

Responding to press Inquires

Reactive press: (No press release) Region 6 press officers will respond to questions from the media, seeking information from Water Quality Division, as needed, about the proposed AR 2010 – 2016 § 303(d) lists and letter to ADEQ.

Anticipated Reaction

Press: Press in Arkansas and Oklahoma will be interested in this action. Some reporters will want to understand the history of the Buffalo River watershed and reporters will want to know why EPA thinks this is not in Category 5.

State: The state will support EPA's action.

Regulated Community: Municipal dischargers into the Illinois River Watershed, particularly the Cities of Rogers and Springdale, will object to the proposed listing of Spring and Osage Creeks. EPA is proposing to keep Spring and Osage Creeks on the 303(d) list because of elevated phosphorus levels and impacts to stream biology, as done since the 2002 Arkansas water quality inventory. These creeks are tributaries to the Illinois River in northwest Arkansas, which then flow into Oklahoma. The Cities of Springdale and Rogers provided funding for a special study that led the State to conclude that these waters did not need to be listed. However, the State did not consider applicable water quality standards that protect healthy stream biology, and EPA believes the study provides information that supports inclusion of Spring and Osage Creeks on the impaired waters list.

Congress: Congressional interest has been high. In December 2011, the entire Arkansas delegation wrote the Administrator expressing concerns over the Illinois River modeling project and TMDL development process. EPA committed to an open process and sharing deliverables for review and comment.

State of Oklahoma: The state of Oklahoma may not support the action given its concerns about water pollution sources and their impact on downstream water bodies in Oklahoma.

Environmental Orgs: Environmental organizations will have high interest due to GP Crossett discharge into the Ouachita River. During the public comment period on Arkansas' draft 2016 list, The Buffalo River Coalition petitioned EPA to list Big Creek over concerns of potential impacts to the Buffalo River Watershed.

Questions and Answers

Q: What action is EPA taking on Arkansas' 2010, 2012, 2014, and 2016 303(d) list of impaired waters?

A: EPA has reviewed the submissions and supporting documentation, and determined that the draft 2010, 2012, 2014 and 2016 § 303(d) lists still requiring total maximum daily loads (TMDLs) partially meet the requirements of § 303(d) of the Clean Water Act and EPA's implementing regulations. Because EPA had not taken final action on Arkansas' 2010, 2012, and 2014 submissions before Arkansas made its 2016 submission, EPA has coordinated its review of Arkansas' four 303(d) lists. EPA is partially approving Arkansas' submission of listed waters on the 2010, 2012, 2014, and 2016 § 303(d) list and taking deferred action on 45 water bodies pollutant combinations not listed on the State's draft 2016 list.

Q: What is a 303(d) list and why is it required?

A: The term “303(d) list” is short for the list of impaired and threatened waters (stream/river segments, lakes) that the Clean Water Act requires all States to submit for EPA approval on even-numbered years. The States identify all waters where required pollution controls are not sufficient to attain or maintain applicable water quality standards and establish priorities for development of TMDLs based on the severity of the pollution and the sensitivity of the uses to be made of the waters, among other factors.

Q: Can water bodies be removed from the list?

A: Yes, States can remove water bodies from the list if available data shows that the water bodies are no longer exceeding a water quality standard, or after they have developed a watershed plan including a TMDL or after other changes to correct water quality problems have been made. A water body can also be taken off the list as a result of a change in water quality standards or removal of designated uses; however, designated uses cannot be deemed unattainable and removed until a thorough analysis clearly shows that they cannot be attained.

Q: How will the list additions affect current and future nonpoint sources before a TMDL is completed?

A: Under existing Clean Water Act requirements, the addition of these segments to the § 303(d) list places no additional requirements on nonpoint sources.

Q: Point and Nonpoint source dischargers into the Illinois River Watershed have spent millions of dollars to improve wastewater treatment systems and reduce nutrient loading. Given this investment and resulting improvements in water quality, why are Spring and Osage Creek still listed on Arkansas’ proposed 303(d) list?

Progress is being made to protect water quality in the Illinois River Watershed as a result of the investment by local governments and businesses to reduce nutrient loads. Both Spring and Osage Creek were included in the most recent (2008) list of impaired waters as well as the proposed 2010 - 2016 lists for elevated levels of total phosphorous. These segments will continue to be listed until a watershed plan is adopted or conclusive data to support delisting is presented.

Q: As a result of this action, will the cities of Rogers and Springdale incur extra costs to address impairment of these waters?

A: Both the cities of Rogers and Springdale are investing in improved water treatment technologies to reduce their impact on the watershed based on previous listings. Today’s action on the 2010 303(d) list does not change the status of Spring and Osage Creeks, which were included on previous years’ lists.

Q: Osage and Spring Creeks have been listed for phosphorus and are tributaries to the Illinois River. How does this action affect the Illinois River Watershed modeling project and potential TMDL development?

A: Since Osage and Spring Creeks were already on the list of impaired waters in Arkansas, including these stream segments on the 2010 - 2016 303d lists will not affect the modeling or potential TMDL development.

Q: Phosphorus limits for NPDES permits in Oklahoma have recently changed to a standard of 1.0 mg/l. Will this proposed action affect current permit holders?

A: No. This action does not affect current permit holders since it does not alter the status of these stream segments which were previously listed as impaired by phosphorus pollution.

Q: How has EPA worked with the State to gather necessary data and verify water quality standards?

EPA provided ADEQ with \$106,200 to automate water quality data and help the State assess all readily available data as well as electronically submit information to EPA. This year, EPA will provide an additional \$197,700 to assist ADEQ in the development of their 303(d) list submission to the Agency in 2018.

Q: What is the strategy for resolving these issues in the future? What resources are available to help State agencies under budget constraints?

A: EPA is working closely with ADEQ to identify water quality data sources for the State to use in the development of 2018 § 303(d) list submittal to the Agency. This year, EPA will provide the State with \$197,000 to assist in the development of its next 303(d) list submission due in 2018.

Q: When will EPA take final action on the State's 2010 – 2016 submittals?

A: After careful review of comments received during the 30-day public comment period, EPA will issue its final decision

MEMBER	STAFF/COMMENTS	EMAIL	Office
ARKANSAS			
Sen. John Boozman (R)	Sen. John Boozman (R) <i>Agriculture, Nutrition & Forestry; Commerce, Science & Transportation; SEPW; Veterans' Affairs</i>		
DC	Helen Tolar, Chief of Staff helen_tolar@boozman.senate.gov	Helen_tolar@boozman.senate.gov	202-224-4843
DC	Philip Moore, Policy Director Jimmy Harris, Legislative Sara Lasure, Press Officer Patrick Creamer, Press Officer	philip_moore@boozman.senate.gov ; jimmy_harris@boozman.senate.gov ; sara_lasure@boozman.senate.gov ; patrick_creamer@boozman.senate.gov ;	202-224-4843 202-224-2609 Direct
Little Rock	Chris Caldwell	Chris_caldwell@boozman.senate.gov ;	501-372-7153
Little Rock	William Rockefeller, Projects Director	William_Rockefeller@boozman.senate.gov ;	501.372.7153
Little Rock	Becca Caldwell		
Lowell	Stacey McClure, State Director	Stacey_mcclure@boozman.senate.gov ;	479-725-0400
Sen. Tom Cotton (R)	Sen. Tom Cotton (R) <i>Appropriations; Commerce, Science & Transp; Homeland Security & Gov. Affairs; Rules & Administration; Small Business & Entrep; Select Ethics</i>		
DC	Doug Coutts, Chief of Staff doug_coutts@cotton.senate.gov		202-224-2353
DC	Legislative Director	jonathan_hiler@cotton.senate.gov ;	202-224-2353 202-228-3063 Direct
	Brian Colas	brian_colas@cotton.senate.gov ;	202-224-2353
DC	Communications Director	caroline_rabbitt@cotton.senate.gov ;	202-224-2353
DC	Deputy Chief of Staff	eliza_baker@cotton.senate.gov ;	501-324-6336
Little Rock	Vanessa Moody	Vanessa_Moody@cotton.senate.gov ;	501-324-6336

1 - Rick Crawford (R)	1 - Rick Crawford (R) <i>Agriculture; Transportation & Infrastructure</i>		
DC	Chief of Staff, jonah.shumate@mail.house.gov		202-225-4076
DC	Chris Jones, Legislative Director and Counsel Ashley Shelton	chris.jones@mail.house.gov ; Ashley.shelton2@mail.house.gov ;	202-225-4076
Jonesboro	Andrea Allen, District Director	Andrea.allen@mail.house.gov ;	
2 – French Hill (R)	2 – French Hill (R) <i>Armed Services; Foreign Affairs; Judiciary</i>		
DC	Chief of Staff, A. Brooke Bennett	a.brooke.bennett@mail.house.gov	202-225-2506
DC	Peter Comstock, Legislative Director	peter.comstock@mail.house.gov	202-225-2506
DC	Holli Heiles, Senior Advisor	holli.heiles@mail.house.gov	(202) 225-2506
Little Rock	Jill Cox, Dep. Dist. Director	Jill.Cox@mail.house.gov	501-324-5941
3 - Steve Womack (R)	3 - Steve Womack (R) <i>Appropriations</i>		
DC	Chief of Staff, beau.walker@mail.house.gov		202-225-4301
DC			202-225-4301
Fort Smith			479-725-0400
DC	Adrielle Churchill, Enviro Contact Claire Burghoff, Communication	Adrielle.Churchill@mail.house.gov ; Claire.burghoff@mail.house.gov ;	202-225-4301
Rogers	Kyle Weaver	Kyle.weaver@mail.house.gov ;	479.464.0446
4 – Bruce Westerman (R)	4 – Bruce Westerman (R) <i>New member, vice Mark Ross (D)</i>		
DC	Vivian Moeglein, Chief of Staff		202-225-3772
DC	Jonathan Shuffield, Legislative Director	jonathan.shuffield@mail.house.gov	202-225-3772
DC	Ryan Saylor, District Director Jefferson Deming, Science	ryan.saylor@mail.house.gov ; Jefferson.deming@mail.house.gov ;	501-520-5892
Hot Springs	Jason McGehee, District Aide	jason.mcgehee@mail.house.gov	870-881-0681 Direct
Pine Bluff			870-536-3376

Ozark			479.754.2120
El Dorado	Ben Gilmore	Ben.Gilmore@mail.house.gov	
OKLAHOMA			
Sen. James Inhofe (R)	Sen. James Inhofe (R) <i>SEPW Ranking Member, Armed Services, Foreign Relations</i>		202-224-4721
DC (Tar Creek)	Ryan Jackson, Chief of Staff	ryan_jackson@inhofe.senate.gov ;	202-224-0152 (direct line)
	Luke Holland, Legislative Director Donelle Harder	Luke_holland@inhofe.senate.gov ; Donelle_harder@inhofe.senate.gov ;	202-224-4721 202-224-1036 Direct
Oklahoma City	Sage Streck, Constituent Rep.	sage_streck@inhofe.senate.gov ;	405-608-4381 405-608-5985 Direct
Enid	Michael Lee, Field Rep.	Michael_lee@inhofe.senate.gov ;	580-234-5105
Tulsa	Norma Barham, Staff Asst.	Norma_barham@inhofe.senate.gov ;	918-748-5111
Sen. James Lankford (R)	Sen. James Lankford (R) <i>Homeland Security & Gov Affairs; Finance; Judiciary</i>		
DC	Greg Slavonic, Chief of Staff, greg_slavonic@lankford.senate.gov		202-224-5754
DC	Michelle Altman, Legis. Dir.,	michelle_altman@lankford.senate.gov ;	202-224-5754
DC	Darrell Jordan, Communication Director	Darrell_jordan@lankford.senate.gov ;	202-228-6494 Direct
DC			202-224-5754
DC	Valerie E. Manak, Enviro	Valerie_Manak@lankford.senate.gov ;	202.224.5754
Oklahoma City	Kelly Ferguson, Correspondence Editor/Grants Manager Mona Taylor	kelly_ferguson@lankford.senate.gov ; mona_taylor@lankford.senate.gov ;	405-231-4941 405-482-6025
1 - James Bridenstine (R)	1 - James Bridenstine (R) <i>New member, vice John Sullivan (R)</i>		
DC	James Mazol, Legislative Director	james.mazol@mail.house.gov ;	202-225-2211
DC	Joseph Kaufman, Chief of Staff	Joseph.kaufman@mail.house.gov ;	202-225-2211
	Sheryl Kaufman, Communications Director	sheryl.kaufman@mail.house.gov	
	Mark Piland, Legislative Aide	mark.piland@mail.house.gov	918-935-3222

Bartlesville			918-336-6500
Tulsa	Gabe Sherman, District Director	gabe.sherman@mail.house.gov	918-935-3222
2 - Markwayne Mullin (R)	2 - Markwayne Mullin (R) <i>New member, vice Dan Boren (D)</i>		202-225-2701
DC	Micheal Stwarka, Legislative Assistant Ag, Tribal, Enviromental	Michael.stwarka@mail.house.gov ;	202-679-9288
DC	Karl Ahlgren, Chief of Staff	karl.ahlgren@mail.house.gov ;	202-225-2701
Claremore	Debbie Dooley	debbie.dooley@mail.house.gov ;	918-341-9339
3 - Frank Lucas (R)	3 - Frank Lucas (R) <i>Agriculture Chair; Financial Services; Science, Space & Technology</i>		
DC	Chief of Staff, Stacey.Glasscock@mail.house.gov		202-225-5565 405-373-1958 Direct
DC	Jason Grassie, Legis. Director	jason.grassie@mail.house.gov ;	202-225-5565
Yukon	Stacey Glasscock, Chief of Staff	stacey.glasscock@mail.house.gov ;	405-373-1958
DC	Christian Dibblee, Enviro	Christian.Dibblee@mail.house.gov ;	202-225-5565
Yukon	Kirby Smith	Kirby.smith@mail.house.gov ;	
4 - Tom Cole (R)	4 - Tom Cole (R) <i>Appropriations, Budget</i>		
DC	Chief of Staff, sean.murphy@mail.house.gov		202-225-6165
DC	Sabrina. Parker, Scheduler	Sabrina.Parker@mail.house.gov ;	
			202-225-6165
District office	Joshua Grogis, Legis. Assistant (Energy) Holmes Whalen, Enviro	joshua.grogis@mail.house.gov ; holmes.whalen@mail.house.gov ;	
Ada	Amber Pollard, Field Rep.	Amber.pollard@mail.house.gov ;	580-436-5375
Norman	Lisa Head, Case Worker	Lisa.head@mail.house.gov ;	
5 – Steve Russell (R)	5 – Steve Russell (R) <i>Budget; Oversight & Gov. Reform; Transportation & Infrastructure</i>		
DC	Chief of Staff	Dean.Fisher@mail.house.gov	202-225-2132
	Legislative Director	alex.hutkin@mail.house.gov	202-225-2132

Arkansas Governor Asa Hutchinson

Tori Gordon, Policy Advisor, Attorney for Environmental Issues 501-683-6432

Tori.Gordon@governor.arkansas.gov**Oklahoma Governor Mary Fallin Chief of Staff Denise Northrup**405-521-2342 denise.northrup@gov.ok.gov

Organization	Email	Phone
National Parks Conservation Association	skodish@npca.org ;	865-964-1774
Environmental Defense Fund	ecraft@edf.org ; ralvarez@edf.org ;	512.691.3452 512.478.5161
Sierra Club	elena.saxonhouse@sierraclub.org ; bruce.nilles@sierraclub.org ;	415.977.5765 415.977-5640 (0) or 608-712-9725
Advocates for Environmental Human Rights	mharden@ehumanrights.org ;	504-799-3060
Ancient Cross Timbers Consortium	dstahle@uark.edu ;	479-575-5809
Arkansas Chapter of Trout Unlimited	jsturgi@aol.com ;	
Arkansas Conservation Alliance	rod.bryan@gmail.com ;	501-749-8808
Arkansas Forestry Association	mbraswell@arkforests.org ;	(501) 374-2441
Arkansas River Valley RC&D Area	aarcd@ipa.net ;	501-354-7900
Arkansas Wildlife Federation	wayne093@centurytel.net ;	501-224-9200
Deep South Center for Environmental Justice (DSCEJ) at Dillard University	drbeverlywright@aol.com ;	504-816-4005
Northwest Arkansas Regional Planning Commission	Nwarpc.org	479-751-7123
Northwest Arkansas Resource, Conservation & Development	jo.mcentire@nwarrcd.org ;	870-715-2933
Sierra Club: Arkansas	glen.hooks@sierraclub.org ; lev.guter@sierraclub.org ;	(501) 301-8280
Sierra Club: Oklahoma	david.ocamb@sierraclub.org ;	501-301-8280
STIR Save the Illinois River Inc.	info@illinoisriver.org ;	918-284-9440
The Ozark Society	racross@uark.edu ;	(479) 587-8757
Turpentine Creek Wildlife Refuge	scott@turpentinecreek.org ;	1 479-253-5841